IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WA.No. 554 OF 2007(A)

AGAINST THE JUDGEMENT IN OP.22839/2006 DATED 13/02/2007
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APPELLANT: PETITIONER

M.P.KOUSALYA, AGED 33 YEARS,
D/O.M.P.RAGHAVAN, HINDI TEACHER,
POOMANGALAM UP SCHOOL, PO PANNIYOOR,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.P.V.MOHANAN
SRI.M.V.AMARESAN

RESPONDENTS: RESPONDENTS
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1. V.K.SANTHAKUMARI, HINDI TEACHER,
POOMANGALAM UP SCHOOL, PANNIYOOR,
TALIPARAMBA TALUK, KANNUR DISTRICT.

2. THE ASSISTANT EDUCATIONAL OFFICER,
TALIPARAMBA NORTH, KANNUR DISTRICT.

3. THE MANAGER POOMANGALAM U.P.SCHOOL,
PANNIYOOR, TALIPARAMBA TALUK.

4. SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. SANDESH RAJA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 5/03/2007, THE COURT ON 20.3.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A.NO. 554 OF 2007

DATED THIS, THE 20TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in W.P.(C) 22839/2006. In the writ petition, inter alia, she sought to quash Ext. P4 and for a declaration that the 4th respondent had not been appointed as Hindi Teacher in Poomangalam U.P. School by the third respondent at any point of time and that she is the lawfully appointed Hindi Teacher in the permanent vacancy and she is entitled to continue. A direction was also sought for directing the second respondent to approve her appointment and to pay all the benefits.

2. The fact in brief relevant for the disposal of this appeal may be stated as follows: The appellant was a Hindi Teacher working in the third respondent's school. The second respondent is the Assistant Educational Officer concerned. According to him, the appellant was appointed by the third respondent Manager in the retirement vacancy of one Radhamani, as per Ext.P1 appointment order. The first respondent had filed O.P. 2006/2002 before this Court in which the petitioner and four others were

parties. The case of the petitioner therein was that she was appointed in the school as a Hindi Teacher from 6.10.1997 till 9.12.1997 and that she had a claim for appointment to the regular vacancy arose in the school on the retirement of Smt. Radhamani. She also set up a contention that she was appointed to the retirement vacancy by the Manager on 3.6.2002 and while so she was denied work by the third respondent/Headmaster saying that she was not appointed by law. That writ petition was finally heard and disposed of by this Court along with another writ petition O.P. 6906/1998 filed by one V.V. Govindan who was allegedly appointed as Hindi Teacher in the anticipated vacancy. Ext.P2 is the copy of the judgment which has become final. It is seen from Ext.P2 that Santhakumari claimed to have been appointed in the leave vacancy as Hindi Teacher from 6.10.1997 to 9.12.1997 and she had worked as such and relieved on the expiry of the leave period. But that appointment was not approved. When a permanent vacancy arose in 2002 she claimed to be re-appointed under Rule 51A of Chapter XIV-A of the Kerala Education Rules. These two appointment orders referred to therein would show that the petitioner therein ie. the first respondent herein had joined in the School in 2002 and it was then that the third respondent Headmaster asked her not to come to the school since the manager appointed Kousalya, the 4th respondent therein who is the appellant herein. In the counter affidavit filed by the Assistant Educational

Officer, it was conceded that the appointment of Santha Kumari in the leave vacancy from 6.10.1997 till 9.12.1997 was not approved mainly for the reason that one Govindan, a senior appointee, was first appointed as regular Hindi Teacher with effect from 13.6.1996 against an anticipated vacancy during 1997; but in the higher level verification no additional post of Hindi Teacher was sanctioned and therefore his appointment was rejected against which O.P.6906/1998 was filed by him and that was the reason why Santhakumari's appointment against the leave vacancy was not approved. But it is also averred that Santhakumari did not prefer any appeal to the higher authorities against the rejection of her appointment. But the fact remains that a revision was filed by her before the Director of Public Instruction. The Manager mainly contended that she never appointed her either in the leave vacancy or a regular vacancy and the signatures contained in Exts.P1 and P2 were contended to be not genuine. The manager also supported the said contention raised by the fourth respondent. This Court, after hearing the parties held that none of the grounds raised in O.P. 6906/1998 challenging Rule 12 of Chapter XXIII of the Kerala Education Rules has any merit and those contentions were repelled. It was also held that merely because Govindan's appointment could not be approved as there was no sanctioned strength, it will in no way stand in the way of approval of the appointment of Santhakumari to the leave vacancy, nor could the

pendency of the original petition filed by Govindan be considered as a valid reason for rejecting the appointment. But since there was a controversy regarding the genuineness of the regular appointment made against the vacancy which arose in 2002, the authorities were directed to consider this matter and accordingly, petitioner in O.P.20061/2002 namely Santhakumari was permitted to file a revision under Rule 92, Chapter XIV-A KER before the Government regarding grant of approval to the appointment given to her in the leave vacancy and also regarding her preferential claim for regular appointment. The Manager, Smt. Lakshmy, Smt. Kousalya (appellant herein) and V.V. Govindan were directed to be arrayed as respondents and the Government was directed to decide the issues raised in the revision within three months of receipt of such revision. Pursuant thereto, Government passed orders G.O.(Rt) No. 2969/06/G.Edn. dated 14.6.2006, which was produced as Ext.P4 and challenged in the writ petition. It was found by the Government that the contention of the Manager regarding the genuineness of the signature is not acceptable in the absence of any evidence to substantiate the same. It was also found that during 1996-97 Santhakumari was initially appointed towards a leave vacancy from 6.10.1997 to 9.12.1997. As a matter of fact, we find that there was no challenge to this appointment in the temporary vacancy. Even though the learned counsel for the appellant would contend that the said appointment

was not approved, as we have already found the appointment of Santhakumari in the leave vacancy in 1997 was not approved only for the reason that the writ petition filed by Govindan, who was appointed in a regular vacancy which was not approved, was pending before this Court. From Ext.P2 judgment, it is clear that there is no justification for the authorities not to accord approval of the appointment of Santhakumari in the leave vacancy merely for the reason that the writ petition filed by Govindan was pending. Thus, if the appointment of Santhakumari in the leave vacancy was liable to be approved then she becomes a rightful claimant under Rule 51A. It is true that there is a dispute regarding the genuineness of the signature of the Manager to the regular appointment made in 2002, of both the petitioner as well as that of Santhakumari. But the authorities below found that the alleged forgery of signature in the appointment order issued to Santhakumari in the regular vacancy is not substantiated by any legal and cogent evidence. At any rate, even after the writ petition was dismissed by the learned Single Judge, which is impugned in this writ appeal, the Manager has not chosen to file any appeal. It is only the petitioner who has come forward to file this appeal re-iterating the contentions and agitating the question on the genuineness of the signature of the Manager and no materials are available on record to substantiate the allegation so made.

3. The learned Single Judge, on an elaborate consideration of the rival submissions made by the parties, took notice of the fact that the appellant/petitioner did not make any effort before the Government in getting the matter decided by an expert opinion regarding the signature so as to resolve the controversy regarding the disputed signature of the Manager. She has also no case that any such request was made and rejected by the Government.

4. We have carefully gone through the judgment of the learned Single Judge under appeal as also the o

rder Ext.P4 which is impugned in the writ petition. As we have already indicated, appointment of Santhakumari in the leave vacancy in 1997 is beyond dispute and beyond challenge. The only reason for not granting approval is the pendency of the writ petition filed by Govindan which, we have already found, is not at all a good reason for refusing approval, especially when the appointment was made against the leave vacancy which has nothing to do with the appointment in a regular vacancy. If the appointment of Santhakumari in the leave vacancy was right and ought to be approved, she had a preferential claim to the permanent vacancy by virtue of Rule 51A and that alone is done by Ext.P4 for whatever reasons, it may be. Further, we find in the circumstances, no ground to interfere with the judgment and Ext.P4 order passed by the Government. However, we

noticed that it was the appellant who continued to work and admittedly Santhakumari, though worked for a few days, was not allowed to work later. The controversy was set at rest by Ext.P4. Though the appointment of Santhakumari is entitled to be approved by the concerned authorities with retrospective effect, notionally with continuity of service and other benefits; but when it comes to payment of salary, Santhakumari, having not worked during the period, will not be entitled for actual remuneration and the remuneration part of it will have to be paid to the appellant herein till the date of Ext.P4 and thereafter to Santhakumari. In all other respects, Ext.P4 stand confirmed.

The writ appeal is disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-